D.B.CIVIL WRIT PETITION No. 7044/2005
Union of India & ors. v. Shanker Lal Meena & anr.

Date of order : 08.08.2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Kamal Dave for the petitioners
Shri S.K.Malik for respondent no.1.

This writ petition on behalf of North Western Railway and its officials is directed against the order of the Central Administrative Tribunal, Jodhpur Bench dated 25.8.2005 in OA no. 222/2004 allowing the Original Application of respondent no.1 Shanker Lal Meena. He had filed application for quashing the order of the Deputy Chief Engineer dated 5.3.2004 directing recovery of Rs. 1,92,924/- in monthly instalments of Rs.3,000/- from his pay, and the appellate order of the Chief Engineer dated 19.8.2004 affirming the order of the Deputy Chief Engineer.

Facts of the case briefly are that on 1.3.2004 a charge-sheet was issued to respondent no.1 who was then posted as Junior Engineer (P-Way) (Construction) at Balotra Railway Station. The charge-sheet stated that as per the agreement sleepers of M+4 density were to be used but sleepers of M+7 density were used; as a result, 150 excess PRC sleepers of 60 Kgs with fittings had to be used in construction of

loop line no.1 causing loss to the Railways to the tune of Rs. 1,92,924/-. The contractor was paid on the basis of M+4 sleeper density as per the agreement.

The respondent took the plea that the work was done under the supervision of senior officers including the Assistant Engineer (Construction) Shri R.P.Tak and the Deputy Chief Engineer (Construction-II) Shri Alok Mishra. Whereas the Assistant Engineer was to check 100% work, , 20% check was to be done by the Deputy Chief Engineer. Not satisfied with the explanation order was passed for recovery of the amount of loss i.e. Rs. 1,92,924/- by Shri Alok Mishra, the Deputy Chief Engineer.

In the original application which the respondent filed before the Tribunal, challenging the said orders, he took the plea that Shri Alok Mishra, who had issued the show cause notice and passed the impugned order as disciplinary authority was witness to the occurrence and therefore he could not act as disciplinary authority. The Tribunal relying on Arjun Chaubey v. Union of India & ors., (1984) 2 SCC 578, upheld the contention and set aside the impugned orders with liberty to the competent authority to initiate fresh proceeding in the matter. The Tribunal observed that if decision is taken to proceed afresh it would be expedient that a joint enquiry is conducted against all the erring officials.

We heard Shri Kamal Dave for the petitioners and Shri S.K.Malik for the respondent. We are of the view that even if Shri Alok Mishra is not treated as a 'witness' to the charge and the decision in Arjun Chaube (supra) in the facts and circumstances is not applied, possibility of bias on the part of Shri Alok Mishra cannot be ruled out. The charge against the respondent in substance was of negligence and prima facie, without intending to express our opinion, if he was guilty of negligence, the officials who were supposed to supervise and check the work may also be responsible to some extent. Whether in the instant case, in the facts and circumstances, the concerned senior officials can be fastened with any liability or not is a different matter which may necessitate an enquiry. For the purpose of this case we would simply observe that if supervising/senior officers also committed dereliction of duty in failing to exercise proper check and supervision, possibility of a desire on their part to hold the subordinate solely guilty and get away cannot be ruled out. As is often said, justice should not only be done but also seem to have been done.

Counsel for the appellant submitted that Alok Mishra had passed the order as the Deputy Chief Engineer being the disciplinary authority. We are not doubting his competence to pass orders as the disciplinary authority but in the view that we have taken of the

matter, possibility of some kind of bias on his part being not altogether ruled out, we are of the opinion that it may not be correct to hold the appellant alone guilty of the loss caused to the Railways. In any view, the matter requires further enquiry at the higher level. In the above premises, while declining to interfere with the order of the Tribunal we too would give liberty to the Railways to hold a fresh enquiry, if so advised, in accordance with law.

We make it clear that any observation in this order should not be understood as our concluded opinion on the point of culpability of one or the other person in the matter.

The writ petition is dismissed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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